

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

OLIMPO SALINAS, JR.,

Plaintiff,

V.

UNITED PROPERTY & CASUALTY
INSURANCE COMPANY, and
MICHELLE TILLMAN,

Defendants.

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CIVIL ACTION
NO.: _____

**DEFENDANT UNITED PROPERTY & CASUALTY INSURANCE COMPANY'S AND
MICHELLE TILLMAN'S NOTICE OF REMOVAL**

Defendants United Property & Casualty Insurance Company ("UPC") and Michelle Tillman file this Notice of Removal:

I. Background

1. On March 21, 2017, Plaintiff Olimpo Salinas, Jr. ("Plaintiff") filed this lawsuit in Hidalgo County, Texas, naming UPC and Michelle Tillman as Defendants.

2. Plaintiff served UPC with a copy of the Original Petition on April 10, 2017.

3. UPC files this notice of removal within 30 days of receiving Plaintiff's initial pleading. *See* 28 U.S.C. § 1446(b). In addition, this Notice of Removal is being filed within one year of the commencement of this action. *See id.*

4. As required by Local Rule 81 and 28 U.S.C. § 1446(a), simultaneously with the filing of this notice of removal, attached hereto as Exhibit "A" is an Index of Matters Being Filed. A copy of the Docket Sheet is attached as Exhibit "B." A copy of Plaintiff's Original Petition and Request for Disclosure is attached as Exhibit "C." A copy of the Citation and

**DEFENDANTS UNITED PROPERTY AND CASUALTY INSURANCE COMPANY'S AND MICHELLE TILLMAN'S
NOTICE OF REMOVAL** – Page 1

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Return of Service to UPC is attached as Exhibit "D." A copy of the Citation and Return of Service to Michelle Tillman is attached as Exhibit "E." Defendant United Property & Casualty Insurance Company's Original Answer to Plaintiff's Original Petition is attached as Exhibit "F." A list of Counsel and Parties to the Case is attached as Exhibit "G." Finally, the affidavit of Brett Gardner is attached as Exhibit "H." A copy of this Notice is also being filed with the state court and served upon the Plaintiff.

5. Venue is proper in this Court under 28 U.S.C. § 1441(a) because this district and division embrace Hidalgo County, Texas, the place where the removed action has been pending.

II. Basis for Removal

6. Removal is proper based on diversity of citizenship under 28 U.S.C. §§ 1332(a), 1441(a) and 1446. This is a civil action between citizens of different states, and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

A. The Proper Parties Are Of Diverse Citizenship.

7. Plaintiff is, and was at the time the lawsuit was filed, a resident and citizen of Texas.

8. UPC was at the time this action was commenced, and still is, a foreign (Florida) property and casualty insurance company authorized to do business in the State of Texas. UPC is organized under Chapter 982 of the Texas Insurance Code.

9. Michelle Tillman is and was at the time the lawsuit was filed, a resident and citizen of the State of Florida.

10. Because Plaintiff is a citizen of Texas and Defendants UPC are Tillman are citizens of Florida, complete diversity of citizenship exists among the proper parties.

B. The Amount in Controversy Exceeds \$75,000.00.

11. This is a civil action in which the amount in controversy exceeds \$75,000.00. Plaintiff alleges that UPC is liable under a residential insurance policy because Plaintiff made a claim under that policy and UPC wrongfully adjusted Plaintiff's claim. Plaintiff alleges that Defendant UPC breached insurance policy number UTH 0097349 01 42, with a Dwelling Limit of \$401,000.00, an Other Structures Limit of \$40,100.00, a Personal Property Limit of \$200,500.00, and a Loss of Use Limit of \$120,300.00, for the property located at 2509 San Efrain, Mission, Texas 78572 (the property giving rise to the present dispute). See Exhibit "H," Gardner Declaration, attached hereto and fully incorporated herein by reference. In determining the amount in controversy, the Court may consider "policy limits . . . penalties, statutory damages, and punitive damages." *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998).

12. In addition to the amounts sought in this litigation by Plaintiff through his policy, Plaintiff's Original Petition alleges that UPC is liable under various statutory and common law causes of action for consequential damages, statutory penalties, treble damages, exemplary damages, court costs, and attorney's fees. As such, Plaintiff's alleged damages greatly exceed \$75,000.00.

III. Conclusion and Prayer

13. Accordingly, all requirements are met for removal under 28 U.S.C. §§ 1332 and 1441. United Property & Casualty Insurance Company and Michelle Tillman hereby remove this case to this Court for trial and determination.

Respectfully submitted,

/s/ Rhonda J. Thompson

RHONDA J. THOMPSON, ATTORNEY-IN-CHARGE

State Bar No. 24029862

Southern District No.: 17055

BRETT GARDNER

State Bar No. 24078539

Southern District No.: 3016873

THOMPSON, COE, COUSINS & IRONS, LLP.

700 N. Pearl Street, 25th Floor

Dallas, Texas 75201

Telephone: (214) 871-8200

Facsimile: (214) 871-8209

Email: rtompson@thompsoncoe.com

Email: bgardner@thompsoncoe.com

COUNSEL FOR DEFENDANT

UNITED PROPERTY & CASUALTY

INSURANCE COMPANY AND MICHELLE

TILLMAN

CERTIFICATE OF SERVICE

This is to certify that on the 10th day of May, 2017, a true and correct copy of the foregoing was delivered to the following counsel for Plaintiff by electronic service and/or facsimile transmission and/or certified mail, return receipt requested:

Ryan K. Haun
D. Douglas Mena
Haun Mena, PLLC
3006 Brazos Street
Houston, Texas 77006
Counsel for Plaintiff

/s/ Brett Gardner

Brett Gardner